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Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.25 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued) (A/C.6/51/NUW/WG/L.1/Rev.1)

1. Mr. LAMMERS (Chairman of the Drafting Committee), introducing the report of the Drafting Committee (A/C.6/51/NUW/WG/L.1/Rev.1), recalled that the Committee had been requested to take up certain paragraphs of article 3, article 7, article 33, the preamble and the final clauses. Consultations had taken place on article 3, and had been coordinated by the representative of Italy, who had reported to the Drafting Committee. A discussion had taken place, and the Drafting Committee had decided to retain the words "apply and adjust" in article 3, paragraph 3, and the words "adjustment or application" in paragraph 5 of the same article; a declaration would accompany the provision, which could be worded as follows: "As far as article 3, paragraph 3 is concerned, it is understood that the present convention will serve as a guideline for future watercourse agreements and that once such agreements are concluded, they will not alter the rights and obligations provided therein unless such agreements provide otherwise".

2. With regard to article 7, the representative of Canada, as the coordinator of the consultations, had asked the Drafting Committee for a little more time to try to reach consensus. The Drafting Committee had acceded to his request.

3. With regard to article 33, on the settlement of disputes, a discussion had taken place on a proposal which had been made by the Chairman of the Drafting Committee after lengthy consultations. The discussion had not been conclusive: amendments had been submitted, reservations had been expressed and delegations had asked for the Chairman's proposal to be submitted in writing. That had been done, and the proposal, in document A/C.6/51/NUW/WG/CRP.83, would be the basis for further consultations.

4. As to the preamble, for the most part the members of the Drafting Committee had been in agreement with its provisions, although some brackets remained and there were several footnotes indicating reservations made by certain delegations.

5. With regard to the final clauses, which had been drawn up on the basis of the text submitted by the Secretariat as amended on the initiative of the representative of Ireland on behalf of the European Union so as to enable the latter to become a party to the convention, they had been approved by the Drafting Committee, and the only pending question was the number of ratifications needed for the entry into force of the convention. The Chairman of the Drafting Committee would make a more detailed report to the Working Group at a later stage.

6. The CHAIRMAN said that the Working Group of the Whole must now consider the articles one by one and adopt them ad referendum, preferably by general agreement. He appealed to delegations which were not fully satisfied to show flexibility so as to facilitate the task of the Working Group; they would still be able to have their positions reflected in the summary record. He recalled that at the first session of the Working Group, all the texts of the draft prepared by the International Law Commission had been considered and the views of States had been reflected in the summary records. Once all the articles had been adopted, the Working Group would adopt the draft convention as a whole, in accordance with the modalities envisaged in paragraph 4 of the annex to General Assembly resolution 51/206. He invited members of the Working Group to consider the report of the Drafting Committee article by article (A/C.6/51/NUW/WG/L.1/Rev.1).

Article 1

7. Mr. SABEL (Israel) said that the words "and of their waters" in article 1, paragraph 1 were superfluous since the term "watercourse" was defined as "a system of surface waters and groundwaters" in article 2, paragraph (a).

8. Mr. ROSENSTOCK (Expert Consultant) said that the inclusion of the words "and of their waters" was explained in the commentary to article 1. Although he understood the position of the Israeli delegation, he did not see what would be gained by deleting the words in question.

9. Mr. SABEL (Israel) said that he would not insist on the deletion.

10. Mr. RAO (India) said that he was surprised that the concept of "conservation", which had appeared in the International Law Commission text, had been abandoned. He was aware that the words "measures of protection, preservation and management" had been substituted for the words "measures of conservation and management" to bring the wording of article 1, paragraph 1, in line with the heading of part IV of the draft, but felt that the concept of conservation was important and that the word should be added to the text.

11. Mr. LAMMERS (Chairman of the Drafting Committee) said that the question had been considered by the Drafting Committee, which had felt that the concepts of protection, preservation and management covered the concept of conservation.

12. The CHAIRMAN said that the comment made by the representative of India would be duly recorded.

13. Mr. SVIRIDOV (Russian Federation) said that he was surprised that article 1, paragraph 3, which had been placed in brackets, had simply been deleted.

14. The CHAIRMAN said that the deletion had been explained by the Chairman of the Drafting Committee in the report he had made to the Working Group on 25 October 1996 (A/C.6/51/SR.24). The paragraph in question resulted from a proposal by the United States delegation which that delegation had withdrawn.

15. Mr. SVIRIDOV (Russian Federation), referring to paragraph 5 of the summary record mentioned by the Chairman, said that it was not stated anywhere that the United States of America had withdrawn its proposal. The paragraph was not clear in that respect, and he felt that the matter had not been settled. As to substance, it would be desirable to maintain the paragraph in question.

16. Mr. HARRIS (United States of America) said that the question had been considered in the Drafting Committee and his delegation had withdrawn its proposal, but had not done so officially. The expression "many delegations" appearing in the paragraph mentioned by the representative of the Russian Federation was perhaps infelicitous, because there had been general agreement.

17. The CHAIRMAN said that the concern expressed by the Russian Federation could be met by formulating a declaration on living resources, possibly in the report of the Working Group to the General Assembly.

18. Ms. GAO Yanping (China) said that her delegation did not have a firm position in that respect, but felt that if the Working Group attached a declaration to article 1, it would be embarking on a dangerous course. There was a risk of ending up with a convention accompanied by a whole series of declarations. That was particularly regrettable in respect of article 1, on which there were no disagreements as to substance. However, in the absence of any other solution, China would not oppose the adoption of a declaration.

19. Mr. SVIRIDOV (Russian Federation) said that he would prefer to maintain paragraph 3 in the initial draft of the Drafting Group, but would not oppose the Chairman's proposal.

20. The CHAIRMAN said that he took it that the Working Group did not wish to restore paragraph 3 to article 1, on the understanding that consultations would take place on the form of a declaration concerning living resources.

21. It was so decided.

22. Ms. GAO Yanping (China) said that she wished to place on record her delegation's reservations on the practice of making declarations.

23. Mr. AMER (Egypt) said that in article 1, paragraph 1, the word "Convention" should be replaced by "Framework Convention". He felt that it would be appropriate to indicate the nature of the convention at the outset.

24. Mr. AMARE (Ethiopia) said that he would prefer to retain the solution adopted by the International Law Commission.

25. Mr. LAMMERS (Chairman of the Drafting Committee) said that the Drafting Committee had had a lengthy discussion on the nature of the convention but had not felt it useful to insert the word "framework" in article 1, particularly since that word was already used in the preamble.

26. Mr. SABEL (Israel), supported by Mr. SALINAS (Chile), Ms. GAO Yanping (China), Mr. PAZARCI (Turkey), Mr. RAO (India) and Mr. LAVALLE (Guatemala), said that it was useful to stress the nature of the convention in the text.

Moreover, the International Law Commission used the word repeatedly in its commentary.

27. Mr. TANZI (Italy) said that the addition of the word "framework" would have no normative or legal effect. The Vienna Convention on the Law of Treaties, moreover, did not provide for such treaties. In any case, the normative effect was determined by the content of the provisions and the addition of the word "framework" was immaterial.

28. Mr. KASME (Syrian Arab Republic) agreed with the Italian representative. He would prefer, however, not to add the word "framework" to article 1, since there was no definition of the term "framework convention".

29. Mr. CANELAS DE CASTRO (Portugal) said that the addition of the word "framework" would, of course, have no normative impact but might complicate the interpretation of the provisions of the convention. As the word was already contained in the preamble, there was no reason to add it to the text of the articles.

30. Mr. SMEJKAL (Czech Republic) noted that the General Assembly used the term "framework convention" in its resolution 51/206. There was also unanimity as to the substance. His delegation was nonetheless prepared to show flexibility and would support whatever solution was adopted by the Working Group.

31. Mr. ROSENSTOCK (Expert Consultant) said that the term could be retained in the preamble, and that with respect to the title and the text of article 1, the Working Group could resume its consideration of the question once it had adopted the draft convention as a whole.

32. The CHAIRMAN said it was his understanding that the Working Group wished to adopt the text of article 1 ad referendum, and that it would reconsider the question before the final adoption of the draft convention.

33. It was so decided.

Article 2

34. The CHAIRMAN said that draft article 2, entitled "Use of terms", reiterated the text proposed by the International Law Commission, except that the order of paragraphs (a) and (b) had been reversed, and an amended version of paragraph (c) and a new paragraph (d) had been proposed by the United States of America and the European Union.

35. Mr. DEKKER (Netherlands) said that the proposal of the United States and the European Union (A/C.6/51/NUW/WG/CRP.81) followed from the decision of the Drafting Committee concerning the final clauses, with the aim of enabling regional economic integration organizations to become parties to the convention. The new text proposed for the new paragraph (d), on which consultations had been held, was based on the definition of regional economic integration organizations contained in the Convention on Biological Diversity.

36. The CHAIRMAN suggested that the debate on article 2 should be deferred, pending the distribution of document A/C.6/51/NUW/WG/CRP.81.

37. Ms. FAHMY (Egypt) expressed a preference for specifying that the term "groundwaters", as used in paragraph (a), referred to all waters forming an integral part of the system, namely, that it also included groundwaters that flowed out of the system and did not flow into a common terminus. She noted that when the latter type of groundwater was pumped - in California, for example - the entire hydrological system was affected.

38. Mr. ROSENSTOCK (Expert Consultant) said that there was no point in being so specific, since the word "system" already referred to what formed a balanced whole, including both groundwaters and surface waters. The introduction of a distinction between various types of groundwaters might lead to the application of different criteria to different waters forming part of the hydrological system and might even exclude such watercourses as the Rio Grande, which ran partly underground, from the scope of the convention.

39. Mr. PAZARCI (Turkey) noted that his country was among those which believed that groundwaters should not be covered by the convention.

40. Mr. NEGA (Ethiopia) said that the technical nature of the Egyptian proposal would only complicate an already complex question. Ethiopia was also among those countries which felt that groundwaters should not be covered by the convention.

41. Mr. CANCHOLA (Mexico) expressed reservations concerning the Egyptian proposal. It added nothing to the current text, which was balanced and reflected the current state of hydrological knowledge.

42. Mr. HAMID (Pakistan), noting that, like Turkey and Ethiopia, his country had reserved its position with respect to the inclusion of the term "groundwaters", said that he did not see how it could be asserted that groundwaters always formed an integral part of the hydrological system, for while surface waters were easily measurable, groundwaters were not. Accordingly, different rules should be applied to those two types of waters.

43. Mr. HABIYAREMYE (Rwanda) said that his country had reserved its position with respect to the inclusion of the term "groundwaters" for the same reasons that Turkey, Ethiopia and Pakistan had put forward.

44. Mr. LAMMERS (Chairman of the Drafting Committee) said that, in view of its extremely technical nature, the Egyptian proposal should first be reviewed by the Expert Consultant.

45. Mr. PAZARCI (Turkey) said that, as the Chairman of the Drafting Committee had indicated in his report, the Committee had been unable to devote sufficient time to article 2, on which members continued to formulate reservations, particularly those countries which favoured excluding the term "groundwaters".

46. Mr. LAMMERS (Chairman of the Drafting Committee) said he recognized that article 2 had been considered at an advanced stage in the Drafting Committee's

work. Certain countries had expressed reservations, which was their right; however, on the whole, delegations had accepted the proposed wording, with minor amendments. As for the time factor, as indicated in paragraph 44 of document A/C.6/51/SR.24, article 2 was not the only provision which might have benefited from more lengthy consideration.

47. Mr. SVIRIDOV (Russian Federation) said that the Russian Federation had mistakenly been included among those States which had formulated reservations with respect to paragraph (b). As it had informed the Secretariat orally and in writing - thus far to no avail - his delegation had no reservations in that regard.

48. The CHAIRMAN assured the representative of the Russian Federation that the Secretariat would take all necessary steps to correct the error.

49. Mr. YAHAYA (Malaysia) said he did not see how the United States proposal would add anything to the existing wording of article 2, subparagraph (c), and requested clarification. However, he agreed with the proposed inclusion of a definition of the term "regional economic integration organization" in subparagraph (d).

50. Mr. KASME (Syrian Arab Republic) recalled that the Working Group had decided not to define the term "optimal utilization" even though it appeared several times in the draft articles and its interpretation could give rise to disputes, on the grounds that article 33 provided for the establishment of an organ for the settlement of any differences in interpretation which might arise. He wondered whether it might be necessary to reopen the discussion and include such a definition, since, as currently worded, article 33 no longer provided for such a mechanism.

51. Mr. JAAFAR (Lebanon) said that groundwaters were difficult to define, even when they formed a system with surface waters; they could be the subject of protracted disputes. It would therefore be helpful to revise the drafting of article 2 in order to define the relationship between groundwaters and surface waters better. He agreed with the representative of the Syrian Arab Republic that it would be useful to define the term "optimal utilization".

52. Mr. HABIYAREMYE (Rwanda) said that his country was incorrectly listed among those States having reserved their position on subparagraph (b).

53. The CHAIRMAN suggested that the discussion of article 2 should be deferred.

54. It was so decided.

Article 3

55. Ms. FAHMY (Egypt) requested that informal consultations should be held in order to reach a consensus, given the reservations of several delegations, including her own, regarding that article.

56. The CHAIRMAN suggested that the Working Group should hold further informal consultations on article 3 and, if necessary, appoint a coordinator.

57. It was so decided.

Article 4

58. The CHAIRMAN said that there appeared to be a consensus regarding the first paragraph. However, reservations had been expressed concerning the second paragraph.

59. Mr. SVIRIDOV (Russian Federation) proposed that, in the first line of paragraph 2, the words "whose use" should be replaced by "whose interests in the uses".

60. The CHAIRMAN said that the amendment proposed by the Russian Federation would be circulated at the next meeting in a document on articles 4 and 5 (A/C.6/51/NUW/WG/CRP.8). It would be preferable to await its distribution before adopting article 4, paragraph 2.

61. Mr. SALINAS (Chile) said that he would prefer to retain the text as it stood. The word "interests" gave the text a highly subjective character that was not desirable.

62. The CHAIRMAN suggested that the Working Group should adopt article 4, paragraph 1, ad referendum and return to paragraph 2 at a later date.

63. It was so decided.

Articles 5, 6, 7 and 8

64. The CHAIRMAN said that consultations were under way on articles 5, 6 and 7; it would therefore be preferable to postpone their adoption. As for article 8, the Chairman of the Drafting Committee had indicated in his report that the final text would depend on the decisions taken on article 5, paragraph 1, and article 6. Thus, it would not be possible to take an immediate decision on that article.

65. Mr. WELBERTS (Germany) introduced a proposal concerning article 8, paragraph 2, sponsored by Argentina, Austria, Egypt, Germany, Greece, Hungary, Italy, Malaysia, Mali, Portugal, Romania, Switzerland, the Syrian Arab Republic, the United States of America, Venezuela and Viet Nam. Those countries believed that the valuable experience in cooperation acquired in mixed commissions should be reflected in the framework convention. Article 8, paragraph 2, could mention the possibility of taking into account the experience gained through agreements and arrangements currently in force in different regions, in particular the establishment of mechanisms or mixed commissions, with the consent of the parties concerned. It might also give examples of substantive issues lending themselves to such cooperation.

66. The sponsors of the proposal had no intention of burdening States parties with new obligations; it would be up to the States parties to establish such mechanisms. Nor was the proposal intended to establish norms; on the contrary, the proposal recognized that conditions of cooperation and relevant needs could vary from one watercourse to another. It simply mentioned one mechanism which

functioned successfully in various parts of the world. For that reason, States representing different interests situated upstream, in the middle or downstream along a watercourse had associated themselves with it.

67. The CHAIRMAN invited the representative of Germany to consult with delegations regarding the proposal before the Working Group took up article 8 the following week.

Article 9

68. The CHAIRMAN said he took it that the Working Group wished to adopt article 9 ad referendum.

69. It was so decided.

Article 10

70. The CHAIRMAN said that there appeared to be consensus on article 10, paragraph 1.

71. Ms. FAHMY (Egypt) said that her delegation had reservations on that paragraph, which stated that no use enjoyed priority. For arid and semi-arid countries, irrigation was often an absolute priority, something that must be taken into account in defining equitable utilization. Her delegation wished to have some time to submit a proposal and therefore requested that consideration of article 10 should be postponed.

72. Mr. NEGA (Ethiopia) said that article 6 drew no distinction between the various current and potential uses. Making such equal treatment subject to the absence of custom to the contrary in article 10 made the article vague. He therefore proposed that the phrase "or custom" in paragraph 1 should be deleted.

73. The CHAIRMAN, turning to article 10, paragraph 2, said he understood that the work of the Group should reflect the content of footnote 16.

74. Mr. LAMMERS (Netherlands) (Chairman of the Drafting Committee) said that, after lengthy consultations, the Drafting Committee had decided to make explicit the concept of "vital human needs" used in paragraph 2 by including the International Law Commission commentary in a footnote. Three delegations had reserved their positions on the question of "vital human needs".

75. Mr. SABEL (Israel) said that his delegation was one of the three and believed that absolute priority should be given to drinking water, without which life would not be possible in certain parts of the world.

76. Mr. CANELAS de CASTRO (Portugal) said that his delegation had also reserved its position on the issue of "vital human needs" and shared the views expressed by the representative of Israel.

77. Mr. SVIRIDOV (Russian Federation) recalled that his delegation had put forward a proposal on the issue, contained in document A/C.6/51/NUW/WG/CRP.34, which sought to give priority to drinking water in paragraph 2.

78. Mr. RAO (India), supported by Mr. MORSHED (Bangladesh), said that, without minimizing the importance of drinking water, it should be given the same priority as water required for the production of food in order to prevent starvation, as suggested in paragraph (3) of the International Law Commission's commentary to article 10.

79. Mr. HARRIS (United States of America) recalled that, at its previous session, the Working Group had debated at length the issue of whether priority should be explicitly given to drinking water. It had concluded that the situation varied from one watercourse to another and that to systematically give absolute priority to drinking water did not reflect the real situation with all watercourses. For example, it could happen that a hydraulic dam was the most important use of a watercourse. In that respect, the Commission's commentary was very balanced, in that it reflected the vital importance of drinking water in certain places without prejudging the situation in other instances.

80. Mr. ROSENSTOCK (Expert Consultant) recalled that paragraph 2 of the article had been accepted without any problem and that no delegation had expressed reservations concerning footnote 16. As clearly stated in paragraph (4) of the Commission's commentary, which was reproduced in that footnote, the expression "vital human needs" referred both to drinking water and to water required for the production of food.

81. Ms. GAO Yanping (China) said that, since footnote 16 would not appear in the convention, a definition of the expression "vital human needs" should be given in order to make the article more clear; some delegations had already proposed that at the last meeting of the Working Group in October 1996.

82. The CHAIRMAN recalled that delegations wishing to express reservations on the article could have their position reflected in the summary record; however, in accordance with the request made by the representative of Egypt, he suggested that any decision on the article should be postponed.

83. Ms. FAHMY (Egypt) said that her delegation withdrew its reservations.

84. Mr. SABEL (Israel) said that he had a problem with the expression "vital human needs" in paragraph 2, and wondered whether it would not be possible to replace it with "vital domestic needs for human and livestock consumption", in accordance with the proposal contained in document A/C.6/NUW/WG/CRP.19.

85. Mr. LAMMERS (Netherlands), Chairman of the Drafting Committee, recalled that at the Committee's last session, in 1996, that expression had been the subject of much argument and a number of conference room papers. At the end of the session, the representative of South Africa, whom the Committee had entrusted with solving problems related to it, had submitted a report which the Committee had quoted in its own report, stating that it had been decided to retain the text of the article in its current form as well as footnote 16, and that three delegations had reserved their positions on the article and the footnote.

86. Mr. NUSSBAUM (Canada) wondered whether the wording of the article could not be improved by beginning paragraph 2 with the words "notwithstanding paragraph 1". That would make the link between the two paragraphs clearer.

87. Mr. KASSEME (Syrian Arab Republic) asked whether the footnotes would be included in the convention.

88. The CHAIRMAN replied that they would not, but that their contents would be reproduced in a different form.

89. Mr. NEGA (Ethiopia) recalled that he had proposed to delete the word "custom" from paragraph 1 of the article, considering that it undermined the balance achieved in article 6; he asked the Working Group to postpone any decision on that paragraph.

90. The CHAIRMAN said that article 10, paragraph 1, had been adopted unanimously by the Drafting Committee at its previous session, and that the Ethiopian proposal called that decision into question. As it seemed that that proposal had not been accepted by most delegations, he asked the representative of Ethiopia whether he could adopt article 10 ad referendum, on the understanding that his position would be duly reflected in the summary record.

91. Mr. AMARE (Ethiopia) agreed to the Chairman's proposal.

92. Mr. SABEL (Israel), recalling the reservation he had expressed concerning paragraph 2, wondered whether the coordinator of the consultations on that article could not try again to achieve a consensus on the expression "basic human needs".

93. Mr. SVIRIDOV (Russian Federation), referring to the statement by the International Law Commission contained in footnote 16 and to the rest of the Commission's commentary, including the comments contained in the report of the Drafting Committee, said that it would be preferable for them to be reflected in the Working Group's report to the General Assembly.

94. Mr. HABIYAREMYE (Rwanda) recalled that his delegation reserved his position concerning the use of the word "custom" in paragraph 1 of the article, considering that it was likely to obstruct the implementation of the convention.

95. The CHAIRMAN said that further consultations would be held on the way the statement reflecting footnote 16 was to be presented; it could, for example, appear in the report of the Working Group to the General Assembly. Taking into account the proposal made by the representative of Israel to hold further consultations on paragraph 2 of the article, he suggested that any decision on that article should be postponed until the next meeting and that the coordinator of consultations should be asked to contact those delegations that had expressed reservations and to try to achieve a consensus before the next meeting.

96. It was so decided.

The meeting rose at 6.15 p.m.